



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XG133**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Port of Kalama Expansion Project on the Lower Columbia River**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS received a request from the Port of Kalama (POK) to issue an incidental harassment authorization (IHA) previously issued to the POK to incidentally take three species of marine mammal, by Level B harassment only, during construction activities associated with an expansion project at the Port of Kalama on the Lower Columbia River, Washington. The current IHA was issued in 2017 and is in effect until August 31, 2018 (2017-2018 IHA). However, the project has been delayed such that none of the work covered by the 2017-2018 IHA has been initiated and, therefore, the POK requested that an IHA be issued to conduct their work beginning on or about September 1, 2018 (2018-2019 IHA). NMFS is seeking public comment on its proposal to issue the 2018-2019 IHA to cover the incidental take analyzed and authorized in the 2017-2018 IHA. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to POK to incidentally take, by Level B harassment, small numbers of marine

mammals during the specified activities. The authorized take numbers and related analyses would be the same as for the 2017-2018 IHA, and the required mitigation, monitoring, and reporting would remain the same as authorized in the 2017-2018 IHA referenced above. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** An electronic copy of the final Authorization issued in 2017 and supporting material along with an updated IHA request memo from POK may be obtained by visiting <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Dale Youngkin, Office of Protected Resources, NMFS, (301) 427-8401.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

### **National Environmental Policy Act**

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500-1508), NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the POK Expansion project. NMFS made the EA available to the public for review and

comment in order to assess the impacts to the human environment of issuance of the 2017-2018 IHA to the POK. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216-6, NMFS signed a Finding of No Significant Impact (FONSI) on October 24, 2016 for issuance of the 2017-2018 IHA. These NEPA documents are available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Since this IHA covers the same work covered in the 2017-2018 IHA, NMFS has reviewed our previous EA and FONSI, and has preliminarily determined that this action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the 2018-2019 IHA request.

### **History of Request**

On September 28, 2015, we received a request from the POK for authorization of the taking, by Level B harassment only, of marine mammals incidental to the construction associated with the Port of Kalama Expansion Project, which involved construction of the Kalama Marine Manufacturing and Export Facility including a new marine terminal for the export of methanol, and installation of engineered log jams, restoration of riparian wetlands, and the removal of existing wood piles in a side channel as mitigation activities. The

specified activity is expected to result in the take of three species of marine mammals (harbor seals, California sea lions, and Steller sea lions). A final version of the application, which we deemed adequate and complete, was submitted on December 10, 2015. We published a notice of a proposed IHA and request for comments on March 21, 2016 (81 FR 715064). After the public comment period and before we issued the final IHA, POK requested that we issue the IHA for 2017 instead of the 2016 work season. We subsequently published the final notice of our issuance of the IHA on December 12, 2016 (81 FR 89436), effective from September 1, 2017-August 31, 2018. In-water work associated with the project was expected to be completed within the one-year timeframe of the IHA.

On June 21, 2018, POK informed NMFS that work relevant to the specified activity considered in the MMPA analysis for the 2017-2018 IHA was postponed and would not be completed. POK requested that the IHA be issued to be effective for the period from September 1, 2018 – August 31, 2019. In support of that request, POK submitted an application addendum affirming that no change in the proposed activities is anticipated and that no new information regarding the abundance of marine mammals is available that would change the previous analysis and findings.

### **Description of the Activity and Anticipated Impacts**

The 2017-2018 IHA covered the construction of a marine terminal and dock/pier for the export of methanol, and associated compensatory mitigation activities for the purposes of offsetting habitat effects from the action. The marine terminal will be approximately 45,000 square feet in size, supported by 320 concrete piles (24-inch precast octagonal piles to be driven by impact hammer) and 16 steel piles (12 x 12-inch and 4 x 18-inch anticipated

to be driven by vibratory hammer, and impact hammering will only be done to drive/proof if necessary). The compensatory mitigation includes installation of 8 engineered log jams (ELJs), which will be anchored by untreated wooden piles driven by impact hammer at low tides (not in water). The compensatory mitigation also includes removal of approximately 320 untreated wooden piles from an abandoned U.S. Army Corps of Engineers (USACE) dike in a nearby backwater area. The piles will be removed either by direct pull or vibratory extraction. Finally, the compensatory mitigation includes wetland restoration and enhancement by removal of invasive species and replacement with native wetland species.

NMFS refers the reader to the documents related to the 2017-2018 IHA for more detailed description of the project activities. These previous documents include the **Federal Register** notice of the issuance of the 2017-2018 IHA for the POK's Port of Kalama Expansion Project (81 FR 89436, December 12, 2016), the **Federal Register** notice of the proposed IHA (81 FR 15064, March 21, 2016), POK's application (and 2018 application addendum), and all associated references.

*Detailed Description of the Action*—A detailed description of the pile driving activities at the Port of Kalama is found in these previous documents and the updated 2018-2019 IHA application addendum. The location, timing (*e.g.*, seasonality), and nature of the pile driving operations, including the type and size of piles and the methods of pile driving, are identical to those described in the previous **Federal Register** notices referenced above.

*Description of Marine Mammals*—A description of the marine mammals in the area of the activities is found in the previous documents referenced above, which remain applicable to this IHA as well. In addition, NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature.

Since the submittal of the 2015 IHA application, the USACE has published updated data on pinniped presence at the Bonneville Dam (Tidwell *et al.*, 2017). This information reveals that in both 2016 and 2017 the numbers of pinnipeds present at Bonneville Dam were within the range of historical variability. The latest USACE data does not suggest a trend that would require a modification to the take estimates or to the effects analysis (see Table 1 below for a summary of monitoring data by year from Tidwell *et al.*, 2017). Therefore, NMFS has preliminarily determined that the updated information does not affect our analysis of impacts for the 2018-2019 IHA.

**Table 1. Minimum estimated number of individual pinnipeds observed at Bonneville Dam tailrace areas and the hours of observation during the focal sampling period, 2002 to 2017 (from Tidwell *et al.*, 2017).**

Year	Total Hours Observed	California Sea Lions	Steller Sea Lions	Harbor Seals	Total Pinnipeds
2002	662	30	0	1	31
2003	1,356	104	3	2	109
2004	516	99	3	2	104
2005*	1,109	81	4	1	86
2006	3,650	72	11	3	86
2007	4,433	71	9	2	82
2008	5,131	82	39	2	123
2009	3,455	54	26	2	82
2010	3,609	89	75	2	166
2011	3,315	54	89	1	144
2012	3,404	39	73	0	112
2013	3,247	56	80	0	136
2014	2,947	71	65	1	137
2015	2,995	195	69 <sup>a</sup>	0	264
2016	1,974	149	54 <sup>a</sup>	0	203
2017	1,142	92	63 <sup>a</sup>	1	156

\*Observations did not begin until March 18 in 2005.

<sup>a</sup> In 2015, 2016, and 2017 the minimum estimated number of Steller sea lions was 55, 41, and 32, respectively. These counts were less than the maximum number of Steller sea lions observed on one day, so Tidwell *et al.* (2017) used the maximum number observed on one day as the minimum number. This difference was driven by a focus on California sea lions and lack of branding or unique markers on Steller sea lions.

*Potential Effects on Marine Mammals*—A description of the potential effects of the specified activities on marine mammals and their habitat is found in the previous documents referenced above, and remain applicable to this proposed IHA. There is no new information

on potential effects that would change our analyses or determinations under the 2018-2019 IHA.

*Estimated Take*—A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The methods of estimating take for this proposed IHA are identical to those used in the 2017-2018 IHA, as is the density of marine mammals. The source levels, also remain unchanged from the 2017-2018 IHA, and NMFS’ 2016 Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS 2016) was used to address new acoustic thresholds in the notice of issuance of the 2017-2018 IHA. As stated above, since the submittal of the application for the 2017-2018 IHA (in effect from September 1, 2017 through August 31, 2018), the USACE has published updated data on pinniped presence at the Bonneville Dam, and this data does not suggest a trend that would require a modification to the take estimates or effects analysis. Consequently, the proposed authorized take for this proposed 2018-2019 IHA is identical to the 2017-2018 IHA, as presented in Table 2 below.

**Table 2. Estimated take proposed for authorization and proportion of population potentially affected.**

	<b>Estimated Take by Level B harassment</b>	<b>Abundance of Stock</b>	<b>Percentage of stock potentially affected</b>	<b>Population trend</b>
Harbor seal	1,530	24,732	6.2	Stable
California sea lion	372	153,337	0.2	Stable
Steller sea lion	372	59,968	0.6	Increasing

*Description of Mitigation, Monitoring and Reporting Measures*—A description of



mitigation, monitoring, and reporting measures is found in the previous documents referenced above, and remain unchanged for this proposed IHA. In summary, mitigation includes implementation of shut down procedures if any marine mammal approaches or enters the Level A harassment zone for impact pile driving. One trained observer shall monitor to implement shutdowns and collect information at each active impact pile driving location. In addition, two shore-based observers (one upstream of the project, and another downstream of the project), whose primary responsibility shall be to record pinnipeds in the disturbance zone and to alert barge-based observers to the presence of pinnipeds, thus creating a redundant alert system for prevention of injurious interaction as well as increasing the probability of detecting pinnipeds in the disturbance zone.

At least three observers shall be on duty during vibratory pile driving activity for the first two days, and thereafter on every third day to allow for estimation of Level B takes. The first observer shall be positioned on a work platform or barge where the entirety of a 10 m shutdown zone can be monitored. Shore based observers shall be positioned to observe the disturbance zone from the bank of the river. Protocols will be implemented to ensure that coordinated communication of sightings occurs between observers in a timely manner.

Pile driving activities shall only be conducted during daylight hours. If the shutdown zone is obscured by fog or poor lighting conditions, pile driving will not be initiated until the entire shutdown zone is visible. Work that has been initiated appropriately in conditions of good visibility may continue during poor visibility. The shutdown zone will be monitored for 30 minutes prior to initiating the start of pile driving, during the activity, and for 30 minutes after activities have ceased. If pinnipeds are present within the shutdown zone prior to pile driving, the start will be delayed until the animals leave the shutdown zone of their

own volition, or until 15 minutes elapse without re-sighting the animal(s).

Soft start procedures shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact driving for a period of thirty minutes or longer. If steel piles require impact installation or proofing, a bubble curtain will be used for sound attenuation.

### **Determinations**

The POK proposes to conduct activities in 2018-2019 that are identical to those covered in the currently 2017-2018 IHA. As described above, the number of estimated takes of the same stocks of harbor seals (OR/WA Coast stock), California sea lion (U.S. stock), and Steller sea lion (Eastern DPS) is the same for this proposed IHA as those authorized in the 2017-2018 IHA, which were found to meet the negligible impact and small numbers standards. The authorized take of 1,200 harbor seals; 70 California sea lions, and 68 Steller sea lions represent 4.8 percent, >0.1 percent, and 0.1 percent of these stocks of marine mammals by Level B harassment, respectively. This proposed IHA includes identical required mitigation, monitoring, and reporting measures as the 2017-2018 IHA, and there is no new information suggesting that our prior analyses or findings should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (2) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (3) the authorized takes represent small numbers of marine mammals relative to the affected species or stock abundances; and (4) the POK's activities will not have an

unmitigable adverse impact on taking for subsistence purposes, as no relevant subsistence uses of marine mammals are implicated by this action.

### **Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is expected to result from this activity, and none would be authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

### **Proposed Authorization**

NMFS proposes to issue an IHA to POK for in-water construction work activities beginning September 2018 through August 2019, with the proposed mitigation, monitoring, and reporting requirements. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

The Port of Kalama (POK), 110 West Marine Drive, Kalama, Washington, 98625, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)) and 50 CFR 216.107 to take marine mammals, by harassment, incidental to conducting in-water construction work for the Port of Kalama Expansion Project contingent upon the following conditions:

1. This Authorization is effective for one year from the date of issuance.
2. Timing of Activities
  - (a) Timing of activities anticipated to result in take of marine mammals shall be conducted between September 1, 2018 and January 31, 2019;
  - (b) Timing of Activities Not Anticipated to Result in Take of Marine Mammals;
    - (i) Dredging would be conducted between September 1, 2018 and December 31, 2018;
    - (ii) Construction/installation of engineered log jams (ELJ) may be conducted year-round ;
    - (iii) Construction that will take place below the Ordinary High Water Mark (OHWM), but outside of the wetted perimeter of the river (in the dry) may be conducted year-round; and
    - (iv) Removal of wooden piles from former trestle in the freshwater intertidal backwater channel portion of the project site (compensatory mitigation measure of removal of 157 wooden piles) may be conducted year-round.
3. This Authorization is valid only for activities associated with in-water construction work for the Port of Kalama Expansion Project on approximately 100 acres (including uplands) at the northern end of the Port of Kalama's North Port site (Lat. 46.049, Long. -122.874), located at approximately river mile 72 along the lower Columbia River along the east bank in Cowlitz County, Washington.
4. Briefings shall be conducted between construction supervisors, crews, marine mammal observer team, and Port of Kalama staff prior to the start of all pile driving/removal work and when new personnel join the work in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

5. (a) The number and species authorized for taking are: 1,530 harbor seals (*Phoca vitulina richardsi*), 372 California sea lions (*Zalophus californianus*), and 372 Steller sea lions (*Eumatopius jubatus*).

(b) The Authorization for taking by harassment is limited to the following acoustic sources and activities:

(i) Impact pile driving; and

(ii) Vibratory pile driving activities (including vibratory removal of temporary construction piles

(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the National Marine Fisheries Service (NMFS) West Coast Regional Administrator at (206) 526-6150 and the NMFS Chief of the Permits and Conservation Division at (301) 427-8401.

6. The taking, by Level B harassment only, is limited to the species listed, and by the numbers listed, under condition 4(a) above. The taking by Level A harassment or death of the species identified in 4(a) or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

7. Mitigation

(a) Activities authorized for take of marine mammals by this Authorization shall occur only during daylight hours.

(b) A bubble curtain shall be used for sound attenuation if steel piles require impact installation or proofing.

(c) Exclusion Zone and Level B Harassment Zones of Influence;

(i) Exclusion zones out to distances encompassing the Level A harassment zones shall be implemented to avoid Level A take of marine mammals (40 m (131 ft) for impact driving of concrete piles; 252 m (828 ft) for impact driving of steel piles; and 16.5 m (54 ft) for vibratory driving of steel piles); and

(ii) Disturbance zones shall be established as 117 m (384 ft) for impact driving of concrete piles; 1,848 m (6,063 ft) for impact driving of steel piles; and line of sight to nearest shoreline (5.7 km (18,700 ft) maximum) for vibratory driving of steel piles;

(d) Monitoring of marine mammals shall take place starting 30 minutes before pile driving begins and shall continue until 30 minutes after pile driving ends.

(e) Soft Start

(i) Soft start procedures shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer; and

(ii) Soft start procedures require that the contractor provides an initial set of three strikes at reduced energy followed by a 30-second waiting period, then two subsequent reduced energy strike sets.

(f) Shutdown Measures

(i) POK shall implement shutdown measures if a marine mammal is sighted within, or is perceived to be approaching, the exclusion zones identified in 5(c)(i) above and the associated construction or pile driving activities shall immediately cease. Pile driving or in-water construction work shall not be resumed until the exclusion zone has been observed as being clear of marine mammals for at least 15 minutes; and

(ii) If marine mammals are present within the exclusion zones established in 5(c)(i) above prior to the start of in-water construction activities, these activities would be delayed until the animals leave the exclusion zone of their own volition, or until 15 minutes elapse without resighting the animal, at which time it may be assumed that the animal(s) have left the exclusion zone.

## 8. Monitoring

Marine Mammal Observers – POK shall employ observers to conduct marine mammal monitoring for its construction project. Observers shall have the following minimum qualifications:

(i) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with the ability to estimate target size and distance. Use of binoculars may be necessary to correctly identify the target;

(ii) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);

(iii) Experience or training in the field identification of the marine mammals that could potentially be encountered;

(iv) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(v) Writing skills sufficient to prepare a report of observations that shall include such information as the number and types of marine mammals observed; the behavior of marine mammals in the project area during construction; the dates and times when observations were conducted; the dates and times when in-water construction activities were conducted; the dates and times when marine mammals were present at or within the defined disturbance zone; and the dates and times when in-water construction activities were suspended to avoid incidental harassment by disturbance from construction noise; and

(vi) Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area.

(b) Individuals meeting the minimum qualifications identified in 7(a), above, shall be present on site (on land or dock) at all times during pile driving activities conducted for the project.

(c) During all impact pile driving activities, observers shall be stationed to allow a clear line of sight of the exclusion zone (10 m (33 ft) except for steel piles, which shall be 18 m (59 ft)) and the entire disturbance zone as identified in Table 2 (attached).

(d) Marine mammal observers shall monitor for the first two days of vibratory pile driving, and thereafter on every third day of vibratory pile driving. Monitoring shall be

conducted by three observers during vibratory pile driving activities. One observer shall be stationed in the general vicinity of the pile being driven and shall have clear line of sight views of the entire inner harbor. Another observer shall be stationed at an accessible location downstream (such as northern tip of Prescott Beach County Park) and would observe the northern (downstream) portion of the disturbance zone. A third observer shall be stationed at an accessible location upstream and would observe the southern (upstream) portion of the disturbance zone.

(e) Marine mammal observers shall scan the waters within each monitoring zone activity using binoculars (Vector 10 X 42 or equivalent), spotting scopes (Swarovski 20-60 zoom or equivalent; Washington Department of Fish and Wildlife 2000), and visual observation.

(f) Marine mammal presence within the Level B harassment zones of influence (disturbance zones) shall be monitored, but pile driving activity shall not be stopped if marine mammals are found present unless they enter or approach the exclusion zone. Any marine mammal observed within the disturbance zone shall be documented and counted as a Level B take. Monitoring during vibratory pile driving shall occur during the first two days of activity and during every three days thereafter to estimate the number of individuals present within the Level B harassment area.

(g) If waters exceed a sea-state which restrict the observers' ability to make observations within the Level A injury exclusion zone, relevant activities shall cease until conditions allow the resumption of monitoring. Vibratory pile installation would continue under these conditions.



(h) The waters shall be scanned 30 minutes prior to commencing pile driving activities and during all pile driving activities. If marine mammals enter or are observed within the designated exclusion zones during, or 15 minutes prior to, impact pile driving, the monitors shall notify the on-site construction manager to not begin, or cease, work until the animal(s) leave of their own volition, or have not been observed within the zone for 15 minutes.

9. Reporting

(a) POK shall provide NMFS with a draft monitoring report within 90 days of the expiration of this Authorization, or within conclusion of the construction work, whichever comes first. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) If comments are received from NMFS (West Coast Regional Administrator or NMFS Office of Protected Resources) on the draft report within 30 days, a final report shall be submitted to NMFS within 30 days thereafter. If not comments are received from NMFS within 30 days after receipt of the draft report, the draft report shall be considered final.

(c) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury, serious injury, or mortality (Level A take), POK shall immediately cease all operations and immediately report the incident to the NMFS Chief of the Permits and Conservation Division, Office of Protected Resources and the NMFS West Coast Regional Stranding Coordinators. The report must include the following information:

- (i) Time, date, and location (latitude and longitude) of the incident;
- (ii) Description of the incident;

- (iii) Status of all sound sources used in the 24 hours preceding the incident;
  - (iv) Environmental conditions (wind speed, wind direction, sea state, cloud cover, visibility, water depth);
  - (v) Description of the marine mammal observations in the 24 hours preceding the incident;
  - (vi) Species identification or description of the animal(s) involved;
  - (vii) The fate of the animal(s); and
  - (viii) Photographs or video footage of the animal(s), if equipment is available.
- (d) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with POK to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. POK may not resume their activities until notified by NMFS via letter, email, or telephone.
- (e) In the event that POK discovers an injured or dead marine mammal, and the marine mammal observer determines that the cause of injury or death is unknown and the death is relatively recent (less than a moderate state of decomposition), POK shall immediately report the incident to the NMFS Chief of Permits and Conservation Division, Office of Protected Resources, and the NMFS West Coast Regional Stranding Coordinator. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS shall work with POK to determine whether modifications in the activities are appropriate
- (f) In the event that POK discovers an injured or dead marine mammal, and the marine mammal observer determines that the injury or death is not associated with or related

to the activities authorized in the IHA (previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), POK shall report the incident to the NMFS Chief of Permits and Conservation Division, Office of Protected Resources, and the NMFS West Coast Regional Stranding Coordinator within 24 hours of the discovery. POK shall provide photographs or video footage (if available) or other documentation of the stranded animal(s) to NMFS and the Marine Mammal Stranding Network. POK may continue its operations under such a case.

10. This Authorization may be modified, suspended, or withdrawn if the holder fails to abide by the conditions prescribed herein or if NMFS determines that the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

### **Request for Public Comments**

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for the proposed POK construction activities. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-year renewal IHA without additional notice when 1) another year of identical or nearly identical activities as described in the Specified Activities section is planned, or 2) the activities would not be completed by the time the IHA expires and renewal would allow completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA;
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized;

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: July 19, 2018.

**Donna S. Wieting,**

*Director,*

*Office of Protected Resources,*

*National Marine Fisheries Service.*

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